IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.3482 OF 2006
IN
APPEAL NO.500 OF 2006
IN
COMPANY APPLICATION NO.489 OF 2005
IN
COMPANY APPLICATION NO.488 OF 2005
IN
COMPANY PETITION NO.345 OF 2001

Hasmukh Sheth & Ors. .... Appellants
Vs.
The Official Liquidator .... Respondent
And
Oman International Bank S.A. ....Ori.Petitioner
And
Asset Reconstruction Company
(India) Limited .... Intervener

Mr. Simil Purohit with Mr. D. Chaurasia i/b M/s. M.K. Ambalal & Co. for the Intervener.

Mr. M.P.S. Rao and Mr. J.K. Mitra i/b M/s. Deven Dwarkadas & Partners for the Appellants.

Mr. Satish Shetty with Mr. R.K. Pandey i/b M/s. M.S. Bodhanwalla & Co. for the original Petitioners.

WITH

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M/s. Deven Dwarkadas & Partners for
the Appellants.

Mr. Satish Shetty with Mr. R.K. Pandey
i/b M/s. M.S. Bodhanwalla & Co. for the
original Petitioners.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: JANUARY 29, 2007

P.C:

1. Notice of Motion No.3482 of 2006 has been taken out by the Asset Reconstruction Company (India) Limited for vacating an order dated 4th August, 2006 passed in the Appeal. The Appeal arises out an order of a learned Single Judge dated 17th February, 2006 by which Company Application No.489 of 2005 in Company Petition No.345 of 2001 seeking a stay of all proceedings under Section 391(6) of the Companies Act, 1956 was dismissed. Asset Reconstruction Company (India) Limited has sought to intervene in the Appeal and at the hearing of the Motion urged before the Court that though it represents 60% of the secured creditors, neither was any notice given to the aforesaid intervener nor was it heard before the proceedings came to be stayed. As a result, it has been submitted that all proceedings, including the enforcement and execution of orders passed by the DRT as well as in proceedings under Section 138 of the

negotiable Instruments Act, 1881 have been stayed. The original Petitioner in the Company Petition Oman International Bank S.A. represents 16% of the secured creditors. Both the intervener and the Oman International Bank S.A. have opposed the continuance of the stay under Section 391(6) and it has been urged on their behalf before the Court that no concrete scheme for realising the dues of the creditors has been forthcoming.

2. At the hearing of the Notice of Motion, learned counsel appearing on behalf of the original Appellants in the Appeal pending before the Court and learned counsel appearing on behalf of the other contesting parties including the intervener and the Oman International Bank S.A. have agreed in stating before the Court that it would be appropriate if the Appeal itself is taken up on board by consent and disposed of. Hence, by consent, the Appeal is taken up on board for hearing. At this stage, learned counsel appearing on behalf of the Appellants, on instructions, has stated before the Court that the Appellants would withdraw Company Application No.489 of 2005 with liberty to institute a fresh Company Application after impleading both the intervener before this Court - Asset Reconstruction Company (India) Limited and Oman International Bank S.A.. This prayer is not opposed.

In the circumstances, Company Application No.489 of 2005 is dismissed as withdrawn with liberty to reserved, as prayed. All the rights and contentions of the parties are kept open, to be urged before the learned Single Judge should a fresh Company Application be instituted. On behalf of the intervener and Oman International Bank S.A., a statement is made that without prejudice to the rights and contentions of these parties, to contest any Company Application that may be filed, on merits, and purely with a view to provide an ad-interim working arrangement, no coercive steps shall be taken against the Company and its Directors for a period of four weeks from today.

3. During the pendency of the Appeal, an undertaking was furnished to this Court on 7-12-2006 and in terms thereof, a statement has been made before the Court that an amount of Rs.44,00,000/- has been deposited with the Official Liquidator by Appellant No.1. On behalf of the Appellants, it has been submitted that liberty may be granted to the Appellants, should the Appellants be so advised to move the learned Single Judge for modification of the terms of the undertaking. In the event such an application is made before the learned Single Judge, it would be open to the learned Single Judge to consider the application and to pass

appropriate orders after hearing the concerned parties. The Appeal is accordingly disposed of.

4. In view of disposal of the Appeal, the Notice of Motion stands disposed of.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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